
1996 Wis Eth Bd 2
GIFTS; IMPROPER USE OF OFFICE

In the case of an individual acting independently of Wisconsin's government and public officials, the Ethics Code does not restrict a private citizen's publishing information about Wisconsin's Legislature or about individual legislators on the internet's World Wide Web. If an individual or business offers to publish information on the internet at a legislator's behest, the legislator may, consistent with the Ethics Code, avail himself or herself of that opportunity if: (1) the Legislature has officially acted to accept that opportunity on behalf of the state; and (2) the legislator use the site to communicate about issues before the Legislature and state government processes and proposals, and not to publish information on private matters, including campaign matters.

OEB 96-2 (February 22, 1996)

Facts

[1] This opinion is based upon these understandings:

- a. You are a member of the Legislature.
- b. An individual who is not a lobbyist has published on the internet's World Wide Web information about Wisconsin's legislators.
- c. The individual undertook this effort on his own as a private venture independent of the Legislature's cooperation.
- d. The individual is starting a business constructing and selling Web sites to businesses and others.

Questions

[2] The Ethics Board understands your questions to be:

1. In what way, if any, do laws administered by the Ethics Board apply to the individual's creation of the World Wide Web site?
2. May you, consistent with laws administered by the Ethics Board, take advantage of the Web site to communicate with constituents if that is an available service?

Discussion

[3] Two provisions of the Ethics Code are most pertinent to your inquiry -- §§19.45(2) and 19.46(1)(b) *Wisconsin Statutes*. Reduced to its elements, §19.45(2) provides:

No state public official
May use his or her position
To obtain financial gain or anything of substantial value
For the official's private benefit.¹

Reduced to its elements, §19.46(1)(b) provides:

No state public official
May use his or her public position
In a way that produces a substantial benefit
For the official.²

¹ Section 19.45(2), *Wisconsin Statutes*, provides:

19.45(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

² Section 19.46(1)(b) provides:

19.46(1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:
(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more

[4] You are a state public official. The World Wide Web site contains information about you because you are a member of the Legislature. However, the site was created independent of your, or the Legislature's participation or cooperation. Under that circumstance, you cannot be said to have used your office or position to obtain anything; the statutory sections discussed simply do not apply. *See* 1995 Wis Eth Bd 5.

[5] In contrast, if because of your government position the individual permits you to select, limit, or control the information published at the Web site to communicate with constituents, then you would be using your government position to publish information in this manner. Your using a World Wide Web site to disseminate information would have substantial value for you. This is evidenced by the fact that the creator of the Web site conducts a business constructing and selling such sites.

[6] The only open question is whether your use of the Web would be a private benefit to you or primarily a public benefit. *See, e.g.,* 1991 Wis Eth Bd 11; 6 Op. Eth. Bd. 25 (1982). This will depend on how you use the site. First, you should treat any offer to use the Web site as an offer made to the State and not to you personally. This means that the Legislature, through established procedures, must accept any offer to use the site and should determine how legislators may use it. Second, if you restrict your use of the site to publication of information about issues before the Legislature and state government processes and proposals, then your use of the site would be consistent with the Ethics Code. *See* §19.56(1), *Wisconsin Statutes*. However, if you use the Web site to publish information on private matters, including campaign matters, then your use of the Web site would appear to primarily benefit you.

Advice

[7] The Ethics Board advises that in the case of an individual acting independently of Wisconsin's government and public officials, the Ethics Code does not restrict a private citizen's publishing information about Wisconsin's Legislature or about individual legislators on the Web. If the Web site is made available to you to publish information you want, you may, consistent with the Ethics Code, avail yourself of that opportunity if: (1) the Legislature

members of the official's immediate family either separately or together, or an organization with which the official is associated.

has officially acted to accept that opportunity on behalf of the state; and (2) you use the site to communicate about issues before the Legislature and state government processes and proposals, and not to publish information on private matters, including campaign matters.